IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1476 OF 2005
WITH
CIVIL APPLICATION NO.3659 OF 2005

Kishinlal Nemchand Jain ..Appellant.

V/s.

Municipal Corpn. for Gr.Bombay. ..Respondent.

Mr.A.S.& R.S.Khatib for appellant.

Mr.Xavier for Respondent-BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 18, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant record produced by the advocate for the appellant.

2. The suit was instituted by the appellant questioning the correctness of notice issued by the Corporation under section 351 of the Corporation Act, wherein the offending structure was described as unauthorised repairs to the structure with M.S.Jaiat & Ladi Coba sloping roof & construction of Mozz. floor with R.S.J & Ladi coba Ladi flooring as shown in sketch overleaf. According to the appellant, there was sufficient material on record to show that

the said structure was authorised. The court below on the other hand, after analysing the evidence on record has found that the appellant/plaintiff failed to produce any documentary evidence about the existence of the suit structure (offending structure) prior to the datum line i.e. 1.4.1962.

3. To get over this position, the counsel for the appellant would rely on the communication sent by the appellant/plaintiff to the Deputy Municipal Commissioner dated 12th July, 1996 which refers to the papers forwarded to the said authority being an approval for repairs given by Ward Officer under No. WOC/5031/SEBI; dated 08/06/1978 and approval by Assistant Engineer, CI division under No.EB/A; dated 13/02/1962. This submission overlooks the findings recorded by the Deputy Municipal Commissioner(Z-I) in his order dated 4/4/1998, which found that the said approved plan and I.O.D. pertain to some different structure and not the suit structure. This finding has been confirmed by the lower court. The learned counsel for the appellant is not in a position to dispute the correctness of the fact noted by the Deputy Municipal Commissioner in his order that the said two documents pertain to some other structure and not the suit structure. If it is so, the

conclusion reached by the lower court that there is no document on record produced by the plaintiff about existence of suit structure prior to the datum line or for that matter the offending structure having been erected after seeking prior approval cannot be doubted. Viewed in this perspective, there is no merits in this appeal. The same will have to be dismissed.

4. Counsel for the appellant would then contend that notice under section 351 is confined to the unauthorised structure as referred to earlier. However, in paragraph-11 of the impugned Judgment the lower court proceeded to observe that no documentary evidence has been produced about the existence of the "suit structure" prior to the datum line. I have already clarified the position, while considering the matter in the earlier part of the Judgment, that the expression "suit structure" will have to be understood to mean the offending structure referred to in notice under section 351 of the Act. No more and no less. Accordingly, even this grievance does not commend to me. Hence, this appeal is dismissed.

5. At this stage, the counsel for the appellant submits that under extant policy, the structure which

has been erected and is subject matter of the suit notice under section 351 of the Act, is permissible and can be tolerated or regularised. It is not possible for this court to examine that question.

6. It will be open to the appellant to make necessary application to the Executive Engineer, Building Proposal ‘City" within three weeks from today. If such application is moved by the appellant through licensed architect the same be considered by the appropriate authority within three weeks from the receipt of such representation.

7. Till such time the representation is not finally disposed of, status quo as of today be maintained with regard to the suit structure.

8. It is made clear that if the appellant fails to make the abovesaid application within three weeks from today, there will be no further protection available to the appellant. In that case, it will be open to the respondent to proceed against the offending structure in accordance with the law.

9. Civil application disposed of accordingly.